

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Revision of the Commission's Rules To Ensure  
Compatibility With Enhanced 911 Emergency  
Calling Systems

CC Docket No. 94-102

Amendment of Parts 2 and 25 To Implement the  
Global Mobile Personal Communications by  
Satellite (GMPCS) Memorandum of Under-  
standing and Arrangements; Petition of the Na-  
tional Telecommunications and Information  
Administration To Amend Part 25 of the Com-  
mission's Rules To Establish Emissions Limits  
for Mobile and Portable Earth Stations Operat-  
ing in the 1610-1660.5 MHz Band

IB Docket No. 99-67

**Comments of TracFone Wireless, Inc.**

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February 19, 2003

## SUMMARY

TracFone Wireless, Inc. (TracFone) opposes the imposition of 911 and E911 requirements on wireless resellers, including resellers like TracFone that offer prepaid services. If the Commission wants to ensure that customers of wireless resellers have access to 911 and E911 services then it must focus its attention on making certain that licensed facilities-based carriers implement their existing requirements. It is licensed carriers who control the wireless networks that have the capabilities to provide access to 911 and E911. Without any network facilities a wireless reseller cannot ensure access to emergency services for its customers unless its underlying facilities-based provider is making such services available.

Even in the case of handset-based location technologies, which are made available in part through handsets sold by resellers, it is unnecessary to impose specific requirements on wireless resellers. It is wireless licensees and their agents that buy the vast majority of handsets from manufacturers. Therefore, automatic location identification capabilities will not be available in handsets sold to resellers until such time as they become widely available to licensed facilities-based carriers and those carriers' agents using the same digital air interface. Extending E911 requirements to wireless resellers will not advance the Commission's goal of bringing access to emergency services to a greater number of consumers, and will only increase administrative burdens on Public Safety Answering Points, wireless resellers, and the Commission.

In addition, although the Commission's licensing authority is a basis for imposing E911 requirements on licensees, the Commission does not have the jurisdiction to apply those requirements to non-licensed wireless resellers who neither operate nor control licensed wireless network facilities. The Commission's suggested assertion of jurisdiction under Section 201(b) of the Communications Act ignores limitations on the Commission's authority with respect to intra-

state communications. There is no doubt that access to 911 and E911 are intrastate services. Indeed, one of the goals of the Commission's proceedings in this area has been to help wireless customers to reach the nearest local Public Safety Answering Point that can provide appropriate help in an emergency.

Finally, if despite TracFone's arguments against E911 regulations for wireless resellers, the Commission adopts such requirements, it must allow resellers adequate time to implement these new rules, particularly any requirements relating to the sale of location capable handsets. Because TracFone must work with manufacturers to add its own proprietary software to track a customer's prepaid usage, it would need an additional one year to fifteen months to begin selling location capable handsets. The Commission provided an extended phase-in period for licensees to comply with E911 rules and it must provide a similar implementation period if it adopts new regulations for wireless resellers.

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IB Docket No. 99-67

**COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (TracFone), by counsel, hereby submits its comments in response to the Further Notice of Proposed Rulemaking released by the Commission on December 20, 2002, regarding the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

TracFone is responding to the *Further Notice* as both a reseller of commercial mobile radio services (CMRS) and a provider of prepaid CMRS. TracFone offers a unique approach to providing mobile telephone services to market segments that have not been adequately served by

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<sup>1</sup> *Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, (*Further Notice of Proposed Rulemaking*), FCC 02-326, released Dec. 20, 2002 (*Further Notice*).

other CMRS carriers. A more complete description of TracFone's service offerings and business strategy will help the Commission to understand the reasons why TracFone believes it is unnecessary to impose 911 and enhanced 911 (E911) requirements on wireless resellers, particularly resellers that offer prepaid wireless services.

TracFone provides prepaid CMRS telecommunications service by reselling services offered by more than 40 licensed cellular network operators. TracFone offers national coverage, wherever mobile wireless telephone services are available, through arrangements with large and small CMRS carriers across the country. TracFone is the only prepaid wireless service that can provide a local wireless telephone number in nearly every city in the United States, including Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. TracFone currently offers new digital handsets that use either TDMA or CDMA digital technology,<sup>2</sup> but about 50 percent of existing TracFone customers use analog-only handsets. TracFone must offer both digital technologies to offer its service throughout the United States. With the purchase of TracFone digital service, customers also receive such enhanced features as voice mail, caller ID, and call waiting.

TracFone currently provides service to over 2 million customers. TracFone is a corporate affiliate of America Movil, S.A. de C.V. – the largest provider of cellular service in Latin America with more than 31 million subscribers in ten countries. Currently, TracFone employs approximately 450 people in its corporate headquarters in Miami, Florida.

TracFone's service allows consumers to purchase airtime minutes before they use them rather than the traditional approach of paying for minutes on a monthly basis. TracFone offers an off-the-shelf, pay-as-you-go, prepaid wireless service with no contracts, credit checks, monthly

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<sup>2</sup> TracFone will begin offering digital GSM services later this year.

fees, activation fees, security deposits, or age limits. Thus, TracFone provides its customers with mobile telephones, services and pricing plans that meet the needs of a variety of consumers for whom existing “traditional” CMRS offerings are inadequate, unavailable, or otherwise inappropriate. These consumers include low-volume users, including people who purchase CMRS phones primarily for safety or security purposes, people who for a variety of reasons want to avoid long-term service commitments of one year or more that contain substantial early termination penalties, consumers who want to control their costs by paying for specified quantities of service in advance, as well as low-income users and young people who cannot meet the credit requirements or security deposit demands of other CMRS carriers. Many TracFone customers (a substantial number of which are senior citizens) utilize TracFone services primarily for safety and security. Prepaid wireless service is becoming an important part of CMRS service in the United States and TracFone is an industry leader in that important and growing market segment.

TracFone handsets may be purchased directly from TracFone or at any one of over 30,000 retail stores nationwide, including such national chain stores as Wal-Mart, K-Mart, Staples, Office Depot, and Target. Like traditional CMRS providers, TracFone subsidizes the cost borne by consumers to acquire the handsets. Unlike traditional CMRS providers, TracFone does not subject its customers to service commitment periods of one year or more in order to ensure that the handset subsidy amounts will be recovered. To sign up for service, a customer purchases a digital handset referred to as a “TracFone,” which comes with 20 minutes of calling time. The customer must call TracFone’s customer service center or use TracFone’s website to have the phone activated and to be assigned a local telephone number. Additional airtime can be acquired through the purchase of prepaid wireless airtime cards at over 60,000 locations or may be purchased over the Internet through TracFone’s website. Currently, these prepaid wireless airtime

cards are sold in increments of 30, 60, 150, and 300 units at manufacturer's suggested retail prices of \$17.99, \$24.99, \$39.99, and \$74.99, respectively, each with 60 days of access.<sup>3</sup> A unit equals one minute of local or long distance calling from the customer's home calling area.<sup>4</sup> If the customer is roaming outside of the home calling area, it takes two units for each one minute of calling time. Each card also has an expiration date, based on when it was activated. But, as long as a customer's handset remains active, prepaid wireless airtime does not expire.<sup>5</sup> TracFone is constantly working with vendors to develop new service plans that meet the needs of consumers and allow TracFone to compete in the CMRS marketplace. For example, TracFone recently introduced AutoPay – a program that allows a customer to have a low monthly charge automatically deducted from her checking account or billed to her credit card. The AutoPay program allows customers to retain active service without having to worry about redeeming additional airtime cards while providing for airtime rates as low as \$0.125 per minute.

Unlike other prepaid wireless carriers, TracFone relies on intelligence in its handsets rather than in a carrier switch or other means to track a customer's prepaid minutes. The TracFone handset displays a customer's actual airtime balance and expiration date on the handset's screen. TracFone does not track this information independently for any individual customer. Thus, before TracFone can offer a new model handset, it must work with the handset manufac-

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<sup>3</sup> TracFone also offers a one-year prepaid wireless service card for \$94.99, which comes with 150-250 airtime minutes and results in a cost less than \$8.00 per month.

<sup>4</sup> TracFone chooses the underlying CMRS carrier based on the customer's home calling area.

<sup>5</sup> For example, a customer may purchase a prepaid wireless airtime card with 60 units and an expiration period of 60 days. If the customer activates the card on January 1, the expiration date is March 2. The customer may use 50 units by February 25 and activate another prepaid wireless airtime card for 60 units with a 60-day expiration date. Now the customer has 70 units of available calling time, all with an expiration date of April 26.



turer to incorporate TracFone's unique proprietary software into the new model. In addition, TracFone must ensure that its handsets are compatible with its underlying facilities-based carriers.

TracFone customers currently receive access to basic 911 services provided by TracFone's underlying facilities-based carriers. TracFone customers also receive Phase I E911 services to the extent that they are provided by TracFone's underlying facilities-based carriers. The unique software in TracFone handsets does not interfere with transmission to a Public Safety Answering Point (PSAP) of a call back number associated with the handset. With respect to Phase II automatic location identification (ALI) services, some of TracFone's underlying carriers have chosen a network-based solution and some have chosen a solution that involves the use of modified handsets. In the case of underlying carriers that plan to use a network-based solution, TracFone customers will receive ALI services to the extent that they are provided in the networks of TracFone's underlying facilities-based carriers. In the case of underlying carriers that have chosen a solution that involves handset modifications, TracFone intends to offer to its customers handsets with the relevant location technologies when those handsets are widely available in the marketplace and TracFone has had an opportunity to modify those new handsets to include TracFone's proprietary software.

## **II. THE COMMISSION DOES NOT HAVE AUTHORITY TO REQUIRE WIRELESS RESELLERS TO COMPLY WITH E911 RULES**

The *Further Notice* seeks comment on whether the Commission has jurisdictional authority to require compliance with the E911 rules by wireless resellers. In TracFone's view, the Commission does not have the authority to apply requirements adopted under the Commission's licensing authority to non-licensed wireless resellers who neither operate nor control licensed

wireless network facilities. As support for its jurisdiction, the Commission refers to its authority under Section 201(b) of the Communications Act to “prescribe such rules and regulations as it deems necessary in carrying out the provisions of the Act.”<sup>6</sup> The *Further Notice* also explains that Section 201(b) extends to CMRS providers, including resellers, through operation of Section 332.<sup>7</sup> The *Further Notice*, however, fails to explain why the Commission’s 201(b) authority over interstate CMRS extends to the provision of 911 and E911 services, which are inherently local in nature and therefore are intrastate services.

The *Further Notice* completely neglects any consideration of Section 2(b) of the Communications Act, which limits the Commission’s authority with respect to “regulations for or in connection with *intrastate* communications service by wire or radio of any carrier.”<sup>8</sup> There is little doubt that access to 911 and E911 services are intrastate services. People requesting help in emergencies want their requests to go to the closest PSAP that will help them and that rarely means an interstate call.<sup>9</sup> Section 2(b) contains some important explicit exceptions to the limitation of the Commission’s authority over intrastate services. For example, the Commission’s licensing authority under Section 301 of the Communications Act specifically grants the Commission authority to license all the channels of radio communications, including intrastate radio

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<sup>6</sup> 47 U.S.C. § 201(b).

<sup>7</sup> *Further Notice*, at para. 96.

<sup>8</sup> 47 U.S.C. § 152(b) (emphasis added).

<sup>9</sup> Indeed one of the significant benefits of E911 is the ability to selectively route calls to the appropriate PSAP based on the location of the caller, so that emergency aid can be dispatched as quickly as possible. *Revision of the Commission’s Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, (*Report and Order and Further Notice*

communications, and to impose conditions on such licenses. Thus, TracFone does not dispute that the Commission has the authority to require licensees to provide intrastate E911 services as part of its Title III licensing authority, and this authority has not been challenged.<sup>10</sup>

Section 2(b) contains no such exception for Section 201(b), which is relied on by the *Further Notice* for jurisdiction. Although the *Further Notice* provides no additional explanation, it is possible that the Commission intends to rely on the Supreme Court's decision in *Iowa Utilities Board* that relied on Section 201(b) as a grant of Commission authority to establish rules for the pricing of intrastate interconnection services.<sup>11</sup> The Court found an implicit exception to Section 2(b) for the local competition provisions of the Telecommunications Act of 1996,<sup>12</sup> but also found that Section 2(b) gives the States exclusive jurisdiction over intrastate services that do not fit within the implicit exception. The Court explained that "[t]he Commission could not, for example, regulate any aspect of intrastate communication *not* governed by the 1996 Act on the the-

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*of Proposed Rulemaking*), 11 FCC Rcd 18676, at paras. 4-5 (1996) (*E911 First Report and Order*).

<sup>10</sup> Section 2(b) also contains an exception for Section 332 of the Communications Act. The purpose of the exception, however, is to recognize that Section 332 precludes State regulation of the entry of and the rates charged by CMRS carriers and provides the Commission authority to regulate interconnection between local exchange carriers and CMRS carriers. *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8<sup>th</sup> Cir. 1997), *rev'd on other grounds*, *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366 (1999). Section 332 of the Communications Act does not address the Commission's authority over intrastate emergency services, and specifically provides States the authority to regulate the "other terms and conditions" of CMRS. 47 U.S.C. § 332(c)(3).

<sup>11</sup> *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

<sup>12</sup> Pub. L. 104-104, 110 Stat. 56 (1996).

ory that it had an ancillary effect on matters within the Commission's primary jurisdiction."<sup>13</sup> Notwithstanding that limitation on Section 201(b) noted by the Supreme Court, that seems to be exactly what the Commission is relying on in proposing to impose 911 and E911 requirements on non-licensed CMRS resellers. The Commission's wireless 911 and E911 rules do not involve implementation of the local competition provisions of the Communications Act nor do they implicate any explicit grant of Commission authority over intrastate services. Therefore, Section 2(b) limits the Commission's authority over such intrastate communications, and prohibits the imposition by the Commission of 911 and E911 obligations on resellers of CMRS services who do not operate and control wireless network facilities pursuant to licenses awarded by the Commission under Title III of the Act.

### **III. IT IS UNNECESSARY TO REQUIRE RESELLERS OR PREPAID WIRELESS CARRIERS TO COMPLY WITH E911 REQUIREMENTS**

There is no reason for the Commission to establish separate 911 and E911 requirements for resellers of wireless services. Access to emergency services will be available to customers of resellers when those services are provided by underlying facilities-based licensees. Also, the Commission has enforcement authority to ensure that underlying facilities-based carriers do not deny access to 911 or E911 services to the customers of resellers, including customers of prepaid services. CMRS carriers who offer prepaid services over their own licensed networks are subject to existing 911 and E911 requirements and there is nothing unique about prepaid wireless resel-

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<sup>13</sup> *AT&T v. Iowa Utilities Bd.*, 525 U.S. at 381 & n. 8; *see also Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 423-24 (5<sup>th</sup> Cir. 1999) (refusing to find Commission authority over intrastate services based on Section 254 of the Communications Act, which was enacted as part of the Telecommunications Act of 1996).

lers that should cause the Commission to adopt 911 or E911 rules in the absence of such rules for other wireless resellers.

**A. Wireless Resellers Can Only Provide 911 and E911 Services When Underlying Licensed Carriers Make These Services Available**

It is unnecessary for the Commission to adopt new regulations requiring wireless resellers to provide access to 911 and E911 services. When facilities-based carriers offer access to emergency services then those services will be available to customers of resellers of those carriers' services. Except for handset-based ALI technologies, the functions associated with providing access to 911 and E911 reside in the networks of licensed facilities-based carriers. For example, carriers choosing a network-based location technology will have the capabilities to provide ALI for all 911 calls made using the carriers' networks, including calls from customers of resellers. Without any control over the underlying networks used to provide access to 911 and E911 services, resellers do not have the capability to offer such services unless their underlying facilities-based carriers themselves provide the services. The *Further Notice* acknowledges this point.<sup>14</sup> Thus, imposition by the Commission of 911 and E911 requirements on resellers will not result in network upgrades that are needed to help consumers reach emergency services. If there is any concern that customers of resellers are receiving a lower level of access to 911 and E911 services, the solution is to use the Commission's enforcement authority to prohibit discrimination by network operators against the customers of resellers.<sup>15</sup>

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<sup>14</sup> *Further Notice*, at para. 97.

<sup>15</sup> Section 20.18(b) of the Commission's Rules requires licensees to transmit *all* wireless 911 calls to a PSAP and Section 20.18(d) requires licensees to provide to PSAPs the telephone number "from *any* mobile handset accessing their system." 47 C.F.R. §§ 20.18(b), 20.18(d) (emphasis added). Enforcement actions could include the imposition of forfeitures, issuance of

Even with respect to the provision of ALI through handset-based location technologies, regulation of wireless resellers is unnecessary. Because facilities-based carriers and their agents sell the vast majority of wireless handsets, ALI capabilities will soon be included in handsets that are compatible with the services of licensees using digital technologies that rely on handset-based ALI.<sup>16</sup> Thus, wireless resellers will be providing customers with location capable handsets without any government requirement.

Instead of increasing consumer access to emergency services, the major result of application of E911 rules to wireless resellers would be additional administrative burdens for both PSAPs and wireless resellers. Because many of the Commission's E911 requirements are triggered by PSAP requests, application of the rules to resellers would require each PSAP to determine which wireless resellers operate in its jurisdiction and submit to each such reseller a formal request for E911 services. Unlike licensees, who are listed in Commission databases, it may be difficult to determine which wireless resellers are operating in a particular PSAP jurisdiction. Also, individual wireless resellers, like TracFone, may offer the services of dozens of facilities-based carriers. Wireless resellers would be forced to match up every PSAP request with the appropriate underlying facilities-based carrier, determine whether the facilities-based carrier has also received a similar PSAP request, and whether the underlying carrier is complying with the request. If an underlying facilities-based carrier was not complying with a PSAP request for E911

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cease and desist orders, and potentially license revocation. *See* Sections 503(b) and 312 of the Communications Act, 47 U.S.C. §§ 503(b), 312.

<sup>16</sup> Section 20.18(g)(4) of the Commission's Rules requires that "[l]icensees employing handset-based location technologies shall ensure that location-capable portable or mobile phones shall

services, a wireless reseller would have little leverage to resolve any PSAP-carrier dispute or force compliance. Its only recourse would be to request a Commission waiver, adding additional burdens to Commission resources. As explained above, currently TracFone provides the same access to 911 and E911 services as its underlying facilities-based carriers without any Commission rules requiring such action.

**B. It Is Unnecessary To Establish Independent E911 Requirements for Prepaid Wireless Carriers**

The *Further Notice* recognizes that there are two types of prepaid wireless providers: licensees that also offer post-paid wireless services and resellers of wireless services.<sup>17</sup> Prepaid wireless providers that operate using their own licensed spectrum are already subject to the Commission's 911 and E911 requirements. The Commission's rules apply to licensees offering certain services and having certain technical characteristics but do not make any distinctions based on billing methodologies.<sup>18</sup> Independent prepaid wireless providers, who are resellers, should be treated as other resellers.

For all of the reasons described above, it is unnecessary for the Commission to adopt rules that require prepaid wireless resellers to provide access to 911 and E911 services. Without a licensed network, prepaid wireless resellers must rely on underlying facilities-based carriers to ensure access to 911 and E911 services for their customers. The *Further Notice* fails to articulate

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conform to industry interoperability standards designed to enable the location of such phones by multiple licensees." 47 C.F.R. § 20.18(g)(4).

<sup>17</sup> *Further Notice*, at para. 99.

<sup>18</sup> 47 C.F.R. § 20.18(a). For example, a broadband PCS licensee offering prepaid service to customers is still offering broadband PCS service to those customers. The Commission's broadband PCS service rules contain no requirements regarding billing methodologies.

a purpose for extending the Commission's rules to prepaid wireless resellers and TracFone believes that such purpose will not be found.

**IV. IF THE COMMISSION ADOPTS SEPARATE 911 AND E911 REQUIREMENTS FOR WIRELESS RESELLERS OR PREPAID WIRELESS CARRIERS, IT MUST PROVIDE ADEQUATE TIME TO IMPLEMENT THOSE REQUIREMENTS**

If, notwithstanding the views stated in these comments, the Commission were to decide to impose 911 and E911 requirements on wireless resellers or on providers of prepaid services, it must recognize that resellers will require a reasonable implementation period. In general, wireless resellers, including those offering prepaid services, already offer the same levels of 911 and E911 services that are provided by their underlying carriers. Therefore, with the exception of handset-based location technologies, prepaid wireless resellers could be subject to an implementation schedule that is similar to that in effect for network operators, so long as the schedule includes waivers granted to licensees that affect the implementation schedule. The Commission must clarify that a reseller will not be subject to enforcement actions for the rule violations of an underlying facilities-based licensee that are outside the control of the reseller.

With respect to handset-based ALI implementation, however, resellers should be entitled to some additional implementation time. Location capable handsets will not become available to resellers until they are widely available in the marketplace. Because wireless resellers have only a small fraction of the number of customers of facilities-based licensees, they will have much less leverage with manufacturers to obtain location capable handsets than will the far larger facilities-based carriers. In addition, facilities-based carriers have no obligation to make handsets available for resale by resellers. Thus, it is likely that wireless resellers will have only limited access to location capable handsets until those handsets are made widely available directly to resellers through the manufacturers. Currently, manufacturers are providing location capable handsets to



major facilities-based carriers who are struggling to meet the implementation requirements applicable to them rather than making those handsets available to resellers.<sup>19</sup>

TracFone, in particular, would need additional handset implementation time because there is one aspect of TracFone's prepaid wireless service that makes it different from other wireless resellers and other providers of prepaid wireless services: TracFone uses specially modified handsets. In general, TracFone handsets are like any other handsets. They must work with the relevant network of one of TracFone's underlying facilities-based carriers. In order for TracFone to track a customer's prepaid minutes, however, TracFone contracts with its handset manufacturers to add proprietary software that enables the handset to track the prepaid minutes available to the customer and the expiration date. The handset tracks this information automatically for the customer. TracFone does not have a centralized account database that tracks an individual customer's prepaid airtime balance or service expiration date.

Because of the need to add software to all TracFone handsets, any handset-based requirements applicable to TracFone must include reasonable time to allow for development, testing, and installation of TracFone's call measurement software in the handsets. TracFone estimates that inclusion of its proprietary software in location capable handsets would require an additional one year to fifteen months before such conforming handsets could be manufactured and available for shipment to TracFone's retail outlets.

In addition, because resellers generally sell their handsets through retail outlets, the Commission must recognize that it would be difficult for TracFone and other resellers to make a

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<sup>19</sup> See Letter from J. Stockman, Counsel for Virgin Mobile USA, LLC, to M. Dortch, Federal Communications Commission, filed Dec. 30, 2002; *see also* Sprint Request for a Limited and

flash cut to selling only location capable handsets. Retailers who sell wireless handsets require adequate inventory. Therefore, it would be impracticable for TracFone to even attempt to coerce retailers to stop selling certain handsets on a specific date. Moreover, such a requirement, if enforceable, would lead to stranded investment for handsets that would become obsolete overnight while still packed in boxes on the shelves of TracFone's retail outlets. Instead, resellers should be provided a period to phase-in availability of location capable handsets, like the Commission provided for licensed facilities-based carriers. Based on all of the factors described above, if the Commission adopts rules to require wireless resellers to phase-in location capable handsets, it should allow not less than one year to fifteen months after the rules become effective for resellers to begin selling location-capable handsets and then adopt a phase-in schedule with timeframes similar to those adopted for Tier III carriers.<sup>20</sup>

## V. CONCLUSION

For the reasons set forth above, TracFone opposes the imposition of independent 911 or E911 requirements on wireless resellers or on prepaid wireless carriers. Such requirements are unnecessary because without a network, a CMRS reseller cannot offer access to emergency ser-

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Temporary Rule Waiver, CC Docket No. 94-102, filed Dec. 20, 2002.

<sup>20</sup> *Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, (*Order To Stay*), 17 FCC Rcd 14,841, at para. 33 (2002) (*E911 Stay Order*). The schedule would need to be adjusted based on the date the Commission would require resellers to begin selling location capable handsets. The *E911 Stay Order* defines Tier III carriers as those with 500,000 or fewer subscribers as of the end of 2002. *Id.*, at paras. 22-23. Although TracFone has a greater number of customers overall, not all of its customers would require location capable handsets because many of TracFone's underlying facilities-based carriers have chosen a network-based ALI solution. In addition, TracFone would be reselling the services of many Tier III licensees and should not be subject to a more stringent implementation than the underlying carrier.

vices unless its underlying facilities-based licensed carrier makes those services available. It is only by vigorously enforcing its 911 and E911 rules for licensed facilities-based carriers that the Commission will be able to ensure that all customers of CMRS services, whether purchased directly from licensed facilities-based carriers or from resellers, receive the benefits of access to 911 and E911.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**

A handwritten signature in black ink, appearing to read 'M. Brecher', written over a horizontal line.

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February 19, 2003

## CERTIFICATE OF SERVICE

I, Joelle Zajk, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on February 19, 2003, a true and correct copy of the foregoing Comments of TracFone Wireless, Inc., was submitted to the following:

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